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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 603

DONALD J. MacFARLANE,

Petitioner,

vs.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,
A CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

MAY IT PLEASE THE COURT:

Your petitioner, Donald J. MacFarlane, respectfully prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the 7th Circuit, entered on the 9th day of November, 1951, affirming the judgment of the District Court for the Western District of Wisconsin, which judgment was dated February 6, 1951, appellant's motion for rehearing being denied November 28, 1951, denying recovery to petitioner on his health and accident policy issued by the defendant, Pacific Mutual Life Insurance Company.

SUMMARY AND STATEMENT OF MATTERS INVOLVED.

Action commenced on or about the 14th day of December, 1948 by plaintiff and appellant, Donald J. MacFarlane, to recover damages for breach and repudiation by defendant, Pacific Mutual Life Insurance Company, of a certain health and accident policy issued by the defendant to the plaintiff.

Plaintiff and petitioner was stricken with polio on or about the 14th day of September, 1946, while said policy was in full force and effect. Defendant paid monthly indemnity under said policy at the rate of $200.00 per month, to on or about the 22nd day of July, 1947, when it refused to make further payments under said policy and advised Petitioner that it considered May 8, 1947 as the cut off date for liability under said policy for house confinement benefits and advised plaintiff that he was no longer house confined within the meaning of the policy, after he had been wheeled out onto his porch in his wheel chair. Further payments were refused under said policy after said date.

The clause involved in said policy is as follows (Tr. 3, 61-62):

> "Pacific Mutual Life Insurance Company hereby insures Donald J. MacFarlane against loss, as hereinafter specified, caused by sickness contracted after fourteen days from the date of this Policy and during the term of this Policy (herein called such sickness); and against loss as hereinafter specified, resulting directly and independently of all other causes * * *; subject to the provisions, conditions and limitations contained in this Policy, as follows:
>
> "'The Sickness Monthly Indemnity is Two Hundred Dollars.
>
> * * *'

"This Policy is issued in consideration of the payment of the premium of One Hundred Twenty-eight & 25/100 Dollars. * * *

"Part I. SICKNESS BENEFITS.

"House Confinement.

"Lifetime Income.

"(a)—The Sickness Monthly Indemnity—will be paid for the period which commences while this Policy is in force, throughout which the insured by reason of such sickness is wholly, necessarily and continuously disabled and prevented from performing every duty pertaining to his occupation and is necessarily, strictly and continuously confined within the house and therein regularly visited and attended by a legally qualified physician or surgeon other than himself.

"Non-House Confinement.

"3 Months Income.

"(b)—The Sickness Monthly Indemnity—will be paid for the period, not exceeding three months, which commences while this Policy is in force, throughout which the Insured, although not confined within the house, is by reason of such sickness wholly, necessarily and continuously disabled and prevented from performing every duty pertaining to his occupation and is necessarily under the regular care and attendance of a legally qualified physician or surgeon other than himself."

The trial court made the following findings of fact, among others (Tr. 66-67):

"11. Defendant, Pacific Mutual Life Insurance Company, paid to Plaintiff indemnity at the rate of Two Hundred ($200.00) Dollars a month, to and including July 21, 1947. The house confinement having ended on May 7, 1947, payments made by the defendant to and including May 7, 1947 discharged the defendant's liability for house confinement indemnity under Part I, subsection (a) of the sickness benefit provision

of the policy, and payments made thereafter from May 8, 1947 to and including July 21, 1947, discharged the non-house confinement, three months' income indemnity under Part K. sub-section (b) of the sickness benefit provisions of the policy to and including July 21, 1947, leaving unpaid the balance of the three-month period from and including July 22, 1947 to and including August 7, 1947. Therefore, there is due the plaintiff from the defendant the unpaid benefits for seventeen (17) days amounting to the sum of One Hundred Nine and 68/100 ($109.68) Dollars, together with interest thereon at the rate of five per cent (5%) from August 8, 1947.

"12. The Plaintiff is permanently physically disabled in that both of his legs are paralyzed; he cannot move about or out of his house without the help of others or without artificial aids, and would be confined to his home if such assistance were not available.

"13. The plaintiff was at all times between Sept. 14, 1946 and Aug. 7, 1947, wholly, necessarily and continuously disabled and prevented from performing every duty pertaining to his occupation, but plaintiff was not regularly visited and attended by a legally qualified physician or surgeon at his house beginning May 8, 1947."

The issues are presented as to whether or not appellant is house confined within the language of the policy when only by artificial aids such as braces, crutches and a wheel chair, petitioner can get out of the house.

The trial court and the court of appeals failed to follow the test of "House Confinement" stated by the Wisconsin cases and failed to give the policy the liberal construction in favor of the insured, contrary to the Wisconsin cases.

The Court of Appeals affirmed the judgment of the District Court, denying recovery and a motion for re-hearing was denied November 28, 1951.

There has been no improvement in the damaged area in MacFarlane's body from the time he was stricken to the date of trial, and the disability which exists is permanent. (Tr. 57-60.)

BASIS ON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION.

This Court's jurisdiction is invoked under 28 U. S. C. A. Sec. 1254.

THE OPINION BELOW.

The opinion below was handed down November 9, 1951, is printed in full in the record (Tr. 74-79) and is reported in 192 Fed. (2) 193.

QUESTIONS PRESENTED.

Is a Federal Court, sitting in Wisconsin, on a case where jurisdiction is derived from a diversity of citizenship and which case involves the meaning of a "house confinement clause" in the policy, bound by the test set up by the Wisconsin Court for determining the meaning of the phrase "House Confinement"?

In constructing an insurance policy where the language may be clearly susceptible to different meanings, when the specific language is applied to the facts involved, therein, should not the policy be construed to favor the insured, pursuant to the Wisconsin cases?

Is the Court of Appeals bound by the findings of the trial court, that after May 8, insured was not attended at his home regularly by a physician, where the undisputed evidence shows that after said date, insured was treated at his home regularly by a physician?

The foregoing questions were determined against the petitioner.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

1. The Court of Appeals has decided a substantial question of State law contrary to the applicable local decisions in that it failed to apply and to follow the test of house confinement prescribed by the Wisconsin court.

2. The Court of Appeals in failing to construe said policy in favor of the insured decided the question of construction of said policy contrary to the Wisconsin cases.

PRAYER FOR CERTIORARI.

WHEREFORE, petitioner, for the reasons outlined above as amplified by the brief in support of this petition which follows, prays that this Court grant its writ of certiorari to review the proceedings below.

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Petitioner,

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FOREWORD.

There are two points which petitioner makes and argues in his brief for a petition for writ of certiorari.

1. The lower courts erred in failing to follow the tests which determine house confinement as established by the Wisconsin cases, and which cases the court must follow under the doctrine of *Erie Railroad* v. *Tompkins,* 304 U. S. 64.

2. Under the doctrine of *Erie Railroad* v. *Tompkins,* this court must find the "house confinement clause" ambiguous when applied to the facts involved therein, *i. e.* capable of two or more meanings and therefore the court must follow the rule in Wisconsin to construe the policy in favor of the insured, and in failing so to do the lower court erred.

I.

The Test of House Confinement Under Wisconsin Cases, Buske v. Federal Casualty Company, 200 Wisconsin, 18, Is the Physical Ability to Walk About Outside.

There is no Wisconsin case holding that one who is paralyzed as petitioner is, is not house confined.

Buske v. *Federal Casualty Company,* 200 Wis. 18, involved a similar policy of insurance with very similar language and an insured who had been committed to a State Mental Hospital, under a court order and who was at

liberty to walk about on the grounds of the hospital. The Wisconsin court in denying relief stated,

> "* * * The confinement referred to is plainly confinement induced by the character and degree of sickness, *a physical incapacity to leave the house resulting directly from the sickness.*"

The above language is but an affirmation of the thought expressed by the trial judge in the findings and decision in the above case, "*the physical incapacity to walk about outside distinguishes a confining from a non-confining illness.*" (Emphasis supplied.)

> Volume 1702, Wisconsin Cases and Briefs, Case No. 7, *Buske* v. *Federal Casualty Company,* 200 Wis. 18.

The word "physical" means body or bodily, according to the dictionary. The word "ability" means power. It would thus appear that the tests expressed by the Wisconsin Court to determine whether one is house confined or not, would be the power of the body to walk about outside, or *the power of the body unaided by artificial aids or outside help to get outside the house.*

The same thought is expressed in the earlier Wisconsin case, *Reeves* v. *Midland Casualty Company,* 170 Wis. 370, at page 374, where the Supreme Court of Wisconsin said,

> "The indemnity provisions of the policy recognized two degrees of illness: (1) When the insured is so ill that he is confined within his house and is therein treated by his physician; the other, *when he is so far recovered that he is able to be outside the house.* * * *" (Emphasis supplied.)

The word "able" of course, means power or ability and the word "recover" has been defined to mean regain, or regain that which one has lost, such as one's health. The undisputed testimony shows that MacFarlane has not re-

covered. The damaged areas of his body are still affected in the same way and as to the same extent as when he was admittedly "house confined". (Tr. 58-60.)

Likewise did the Wisconsin Supreme Court intimate in its decision in the *Buske Case*, 200 Wis. 18, p. 21, that it is the spirit of the language that should control, wherein, in discussing the house confinement clause, it stated,

> "Neither is her situation comparable to a tuberculosis patient, who though confined in bed lives in the open air. Such a situation presents a case of complete physical disability and might very well be held to respond to the spirit of the requirements set up by the policy for full indemnity."

The trial court found that MacFarlane was permanently physically disabled, and that both his legs were paralyzed, "he cannot move about or be outside his home without the help of others or without artificial aids." (Tr. 66.)

The use of artificial aids to overcome disability, under the law of Wisconsin, does not overcome the legal effects of disability as a matter of law to bar recovery. Thus in *MacDonald* v. *Industrial Commission*, 165 Wis. 372, applicant had been injured and partial paralysis followed, but applicant could walk to some extent by using a cane, but could not follow his work as a carpenter, and an award of total disability was upheld, the Supreme Court of Wisconsin holding that for all practical purposes he had lost the use of his legs at the hips. Nor are a man's braces, crutches, or wooden legs a part of his person, but are separate personal property. *London Guaranty and Accident Company* v. *Industrial Commission*, 249 Pac. 642.

It thus appears that the lower courts failed to follow the test prescribed by the Wisconsin Court for determination of house confinement, and that the lower court has decided a substantial question of state law, contrary to the applicable local decisions. See *Stoner* v. *N. Y. Life Ins. Co.*, 311 U. S. 464, 469, 61 S. Ct. 336.

II.

The Lower Court Erroneously Failed to Follow the Wisconsin Decisions Which Would Hold the House Confinement Clause Ambiguous as Applied to the Facts Here, and the Lower Court Declined to Give the Policy a Liberal Construction in Favor of the Insured as Required by the Wisconsin Cases.

The Court, in its opinion, at page 5, in the instant case, determined that the language of the *Reeves* case construing a similar policy bars a liberal construction of the policy involved here. However, it appears in the *Reeves* case that the Supreme Court of Wisconsin *specifically rejected the liberal construction on the grounds that construction cannot be resorted to unless ambiguity exists.* *Reeves* v. *Midland Casualty Company*, 170 Wis. 370, 373.

There, the language in the policy was clear, and there was no ambiguity in applying the language of the policy to the facts before the court. In so doing, the Wisconsin Court was correct. However in the case at bar, while the language of the policy itself may not be ambiguous, *it becomes so when applied to the facts before it.* In the case at bar, we have a plaintiff who was found to be permanently and totally disabled in that he has no power or locomotion. Is he house confined? What is meant by house confinement?

The Wisconsin court held in *Kleuter* v. *Schlitz Brewing Company*, 143 Wis. 347, that *ambiguity in a written contract, calling for construction, may arise from words, plain in themselves,* but *uncertain when applied to the subject matter, as well as from words which are uncertain in their literal sense.* The Wisconsin Court has held that the same rule of construction is to be applied to policies of insurance as to other contracts, *i. e.* to ascertain the intended meaning and understanding of the parties and carry out the

contract accordingly. *Prieger* v. *Exchange Mutual Insurance Co.*, 6 Wis. 89, *Sawyer* v. *Dodge County Insurance Co.*, 37 Wis. 503.

In *Clappenback* v. *New York Life Insurance Co.*, 136 Wis. 626, it was held that an apparently unambiguous contract may be rendered ambiguous and open to construction if its words, taken literally, lead to absurdity or illegality, when applied to the facts.

In *Wheelwright* v. *Pure Milk Association*, 208 Wis. 40, it is held that the language of a contract is ambiguous when the language may reasonably be taken in more than one sense.

It thus becomes very apparent from the foregoing that more than one meaning can properly be attributable to the provisions of the policy here, hinging upon the meaning of the provisions for house confinement.

It is a well settled rule in Wisconsin that when a provision of an insurance policy clause, written by the insurer, is ambiguous, capable of more than one meaning, it will be construed most favorably to the insured.

The Wisconsin Supreme Court, in *Wright* v. *Wrights-Town-Morrison F. Mutual Insurance Company*, 222 Wis. 462, at 466 said:

> "If an insurance company, in writing its policy, fails so to write a provision as to indicate with reasonable certainty what it means by it, it has no just cause for complaint that the provision is given a reasonable construction contrary to its contention, although its contention may also have reason to support it. The court will not in such case do any fine or precise balancing of reasons or splitting of hairs to uphold its contention."

In *Vinograd* v. *Traveler's Protective Association*, 217 Wis. 316, the Supreme Court of Wisconsin, in distinguish-

ing the construction placed by the court on a similar policy of insurance, stated:

> "The decision of the trial court was influenced by the opinion of this court in *Shevlin* v. *American Mutual Accident Association,* 94 Wis. 180. It is true that language used in the opinion of that case, if applicable to the instant case, warrants the decision made. *But, the language of an opinion must be considered in connection with the particular facts involved. Applying language pertinent to one set of facts to a different set of facts is seldom warranted.* Two facts of the *Shevlin Case* were widely different from those here involved * * *. In the *Shevlin Case* it was held the language in a policy involved in the *Vinograd Case* was held open for construction, and the court continued, 'The field for construction being open, it is a familiar rule that in insurance contracts, the construction most favorable to the insured will be adopted. *Bakolars* v. *Continental Casualty Company,* 141 Wis. 43.' " (Italics supplied.)

In *French* v. *Fidelity & Casualty Co.,* 135 Wis. 259, at page 265, the Wisconsin Court stated that any provision or exception that is uncertain or ambiguous in its meaning, or is capable of two interpretations, should receive the construction most favorable to the insured.

> See also *Charette* v. *Prudential Ins. Co.,* 202 Wis. 470.

As was pointed out in the *Vinograd Case,* the language of an opinion must be considered in connection with the particular set of facts involved. "Applying language pertiment to one set of facts to a different set of facts is seldom warranted." As the Court has stated at page 6 of its opinion in the case at bar, the facts of the *Buske Case* and the *Reeves Case* are different from those of the instant case.

Facts distinguishing the *MacFarlane Case* from the *Reeves Case:*

1. **There is permanent disability in the *MacFarlane Case,* and there is no permanent disability in the *Reeves Case.***

2. **There is no physical ability in the *MacFarlane Case* to move about unaided. There was ability to move about unaided and to get outside the house present in the *Reeves Case.***

3. **The policy in the instant case provides "lifetime income—house confinement". There was no such provision as near as we can find in the Reeves policy.**

4. **There was no improvement in the stricken areas in the *MacFarlane Case.* Such improvement was present in the *Reeves Case.***

5. **"Strict compliance on the part of the insured or beneficiary with all the provisions of this contract shall be precedent to recovery hereunder, and any failure in this respect shall forfeit to the company all right of any indemnity." This is a part of the policy involved in the *Reeves Case,* for which there is no corresponding part involved in the case at bar.**

As we have also pointed out in the *Reeves Case,* the language of the policy there was held by the Supreme Court not to be open to construction because there was no ambiguity. In the case at bar, *application of similar language to a different set of facts involves an ambiguity as the words of the policy become susceptible to two different meanings, when applied to the precise facts.*

For such reasons, as above set forth, it becomes apparent that construction is necessary. The rule in Wisconsin is that where ambiguity exists, the policy must be construed, and the *policy will be construed somewhat strictly against the insurer and most favorably to the insured. Christensen* v. *Schenkenberg,* 200 Wis. 581. *Andrews* v. *United States Casualty Company,* 154 Wis. 82, p. 85, *Vinograd* v. *Travel-*

er's Protective Association, 217 Wis. 316, *Garnsky* v. *Metropolitan Life Insurance Company,* 232 Wis. 474, 481.

And in *Rood* v. *Merchants Insurance Company,* 240 Wis. 329, the Wisconsin Supreme Court said with reference to an insurance clause:

> "That this particular clause is open to the interpretation we have indicated seems manifest. Here exists a plain patent ambiguity and it is not contended that the other demolition clauses impose any less liability than this one. By the coverage clause of the body of the policy all increased costs due to demolition caused by necessary conformance to building regulations imposed by ordinance are excluded. * * * To give it any less effect would be to trick the assured into thinking he gets something he does not get and into paying a premium for something he does not get. The insurance companies write these riders. Provisions in riders to insurance policies are to be construed in favor of the assured if they are ambiguous. *Lewis* v. *Insurance Co. of North America,* 203 Wis. 324, 326, 234 N. W. 499. And ambiguities may be latent as well as patent. Latent ambiguities arise when the circumstances under which the instrument was made show an intent or purpose inconsistent with strict language of the instrument itself. They arise when the object of the provision claimed to be ambiguous or the subject matter to which it relates shows what the real meaning of the parties was. Many cases holding to the general effect are cited in 3 Words and Phrases (perm. ed.), pp. 312, 313, and 24 Words and Phrases (perm. ed.), pp. 301 to 304. In such cases the circumstances may be considered for their bearing on construction. The purpose being plain the language used will be construed not to defeat but to accomplish that purpose. The rule is applicable to insurance contracts as well as others. *Hammond* v. *Capital City Mut. F. Ins. Co.,* 151 Wis. 62, 138 N. W. 92, which has been followed in numerous subsequent cases cited in Shepard's Citations, one as late as *Koepke* v. *Sass,* 239 Wis. 291, 1 N. W. (2d) 145."

In *Patterson* v. *National Premium Mutual Life Insurance Co.*, 100 Wis. 118, it was held that in case of doubt or ambiguity, the language of an insurance policy should be construed most strongly against the insurer. See also *Kelly* v. *Fidelity Mutual Life Insurance Company*, 169 Wis. 274, *where language in a policy, clear in itself, becomes ambiguous when applied to the facts before the court.* So, in the case at bar, the language of the policy should be construed most strongly against the insurance company, contrary to the quoted portion of the *Reeves Case* in the opinion of the Court of Appeals at page 5.

It must also be borne in mind that the policy in the instant case bears additional language at the commencement of the policy. "This policy provides indemnity for loss of time on account of disability and other specified losses, caused by bodily injuries effectuated through accidental means and sickness as herein provided" (Tr. 3) and then in the provisions setting up the sickness benefits with reference to Part I, A. sets up *"house Confinement-Lifetime Income."* (Tr. 4.)

It is also to be noted, however, that during the entire period of time that MacFarlane was at the hospital, and later taken to his home, and up until May, 1947, the insurance company paid its contracted payments of $200.00 a month. By so doing the defendant has construed the policy as not requiring the limitations set up in the *Reeves Case.* MacFarlane was not confined to the house within the language of the *Reeves Case,* as interpreted by the Respondent, when he was carried out in an ambulance and transported to Mercy Hospital. Nor was Mercy Hospital his home, within the language of the *Reeves Case.* Then, if a treatment at the physician's office is excluded by the language of the *Reeves Case,* certainly treatment at the hospital should equally be excluded, as not being plaintiff's home. Thus it would *appear that the insurance company has con-*

strued the policy as not requiring the limitations set up in the Reeves Case, but has treated his disability and the house confinement features of the policy as the lack of power or ability to remove himself out of the four walls of the house. As the record shows, MacFarlane's condition when he was at Mercy Hospital was no different than it was on the day of trial. (Tr. 59.)

There is a rule of construction under the Wisconsin cases that parties may be bound by the construction they have placed on their contracts, or their policies. Thus, in *Carlson* v. *Scandia Life Insurance Co.*, 170 Wis. 342, it was said that where two constructions are possible, *the construction given the policy by the company itself must be considered as very persuasive.*

So, in the case at bar, MacFarlane's condition on the day of trial had not improved any. While in Mercy Hospital, under the language of the *Reeves Case,* he was not house confined, having been taken out of the four walls of the house. *He did not go to Mercy Hospital under his own power, but by means of artificial aids. Neither can MacFarlane get out of the house now, except by artificial aids,* as the Court found.

Nor is plaintiff bound to use the artificial aids. His contract does not so provide. See *Nomey* v. *Pacific Mutual Life Insurance Co.*, 33 So. (2d) 531, and *Miller* v. *Mutual Life Ins. Co. of New York,* 289 N. W. 399, 126 A. L. R. 129.

It is respectfully submitted that in as much as the Court of Appeals determined that the *Reeves Case* bars a liberal interpretation of the policy, and it now being shown that this was not given a liberal construction because of no ambiguity, and it *now appearing that an ambiguity exists in the application of similar language,* but somewhat different language, *to different facts,* and that the Wisconsin Court has taken the position in the *Vinograd Case and*

others that applying language pertinent to one set of facts to a different set of facts is seldom warranted, that a liberal construction here is clearly required.

Kelly v. *Fidelity Mutual Life Ins. Co.*, 169 Wis. 274.

Furthermore, the insurance company is bound by its own construction of the policy as treating MacFarlane as house confined, when his condition is identical with that of the day he was stricken, and then carried out of the four walls of his house. It is also true that it is a familiar rule of law expressed in the Wisconsin cases, that when the existence of a state of things is once established, by proof, the law presumes that the personal relationship or state of things continues to exist as before. *State ex rel. Coffey* v. *Chittenden*, 112 Wis. 569.

In the case at bar, MacFarlane was admittedly house confined. His physical condition and ability have not changed. It is presumed that he is still house confined within the meaning of the Wisconsin cases, "until he has so far recovered that he is able to be outside the house". *Reeves* v. *Midland Casualty Co.*, 170 Wis. 370, 374. Plaintiff has not "recovered". The damaged areas are still affected in the same way and as to the same extent as when he was admittedly house confined. The non-house confinement features of the policy do not come into play until there is some recovery. Here there is none.

III.

The Finding That Plaintiff Was Not Regularly Attended by a Physician at His Home After May 8, 1947, Is Not Sustained by Evidence of Any Nature Whatsoever.

The finding so made that plaintiff was not regularly attended by a physician at his home after May 8, 1947 is contrary to the undisputed evidence, and such finding is clearly erroneous. The record shows that MacFarlane was treated both at his home and at his physician's office after May 8, 1947. (Tr. 38, 39, 49 and 57.) MacFarlane testified to these facts on direct examination and on cross-examination, likewise did his physician, Dr. Farnsworth testify that MacFarlane was treated both at the home of MacFarlane and at the Doctor's office. Treatment at the office cannot nullify the positive facts of treatment at the house, undisputed positive evidence of treatment at the house. In this respect, the findings of the trial court are clearly erroneous.

Likewise, if our position as to the liberal construction of the policy is correct, as expressed above, the finding of the trial court is premised on an erroneous application of the Wisconsin law by the trial judge.

It is submitted that under rule 52-A, the foregoing finding is not sustained by the evidence.

In *Gipps Brewing Company* v. *Central Manufacturers Mutual Insurance Company,* 147 Fed. (2d) 6, 14, a finding that the insured complied with all the conditions precedent to instituting suit on the fire insurance policy was not sustained by the evidence.

Furthermore the doctrine is that where the disability is permanent and further care will not improve the damaged areas, failure to be visited by a physician does not bar recovery. (115 A. L. R. 1062, 1066, 1067, 1069.)

CONCLUSION.

For the reasons outlined above in this brief, in support of the petition for writ of certiorari herein, we respectfully submit that the writ should be issued by this court.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1951

No. 603

DONALD J. MacFARLANE,

Petitioner,

vs.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

RESPONDENT'S BRIEF.

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